

United States  
Court of Appeals  
For the Ninth Circuit

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JACKSON MORGAN,  
*Appellant,*

v.

UNITED STATES OF AMERICA,  
*Appellee.*

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**Appellant's Petition for Rehearing**

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*Attorney for Appellant.*

FILED

MAY 12 1968

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**Appellant's Petition for Rehearing**

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To the United States Court of Appeals for the Ninth Circuit and the Judges Thereof:

Appellant in the above-entitled cause, presents this, his petition for a rehearing of the above-entitled cause, and in support thereof respectfully shows:

I.

Appellant reiterates his objection to the Constitutionality of the presumptions created by the statute as assigned as Error Nos. 3 and 4 in Appellant's Opening Brief. It is respectfully submitted that Title 21 U.S.C., Section 174, is invalid because it raises the presumption that narcotics in the possession of the defendant were

unlawfully imported and that the defendant knew this. Title 26, 4704 (a) further raises a presumption that the absence of appropriate taxpaid stamps from narcotic drugs shall be prima facie evidence of a violation of the statute. It is urged once again that Title 21 U.S.C., Section 174 is unconstitutionally vague because it is against reason and logic to say that from the existence of possession of narcotics that a person knows that they were illegally imported to the United States when such product can be produced in the United States and at least in some cases is going to be contrary to the facts of the case.

It is further reiterated that both sections violate the Fifth Amendment because they can be rebutted only by requiring the defendant to testify and produce evidence to explain away the presumption.

## II.

It is urged once again that the Court below erred in limiting the cross-examination of some of the State's witnesses designed to place their testimony in proper perspective.

## III.

It is further reiterated that the Court below erred in failing to give the whole of defendant's requested instruction No. 2.

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For the reasons stated above, petitioner requests that a rehearing be granted and that on rehearing the judgment of this Court be reversed and the judgment of the United States District Court be reversed.

Dated this 11 day of April, 1968.

Respectfully submitted,

*Attorney for Appellant.*

Jackson Morgan, appellant herein, by his attorney, hereby certifies that the foregoing petition for rehearing is not presented for the purpose of delay or vexation, but is, in the opinion of counsel, well founded in law, and proper to be filed herein.

Dated this 11 day of April, 1968.

*Attorney for Appellant.*

STATE OF OREGON }  
 County of Multnomah } ss.

I, JULIAN HERNDON, JR., being first duly sworn on oath, depose and say:

That I served a copy of the foregoing Appellant's Petition for Rehearing on Michael J. Swofford, Deputy U.S. Attorney, attorney for Appellee, on the // day of April, 1968, by mailing to him a true and correct copy thereof, certified by me as such, prior to mailing Appellant's Petition for Rehearing to the United States Court of Appeals for the Ninth Circuit. I further swear that said copy was placed in a sealed envelope addressed to said attorney at U.S. Courthouse, Seattle, Washington, his last known address, and deposited in the Post Office at Portland, Oregon, on the // day of April, 1968, and that the postage thereon was prepaid.

SUBSCRIBED AND SWORN TO before me this  
 // day of April, 1968.

NOTARY PUBLIC for Oregon  
 My Commission expires: 4/13/70